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**Subject:** ARO Letter - Middle-Black Ecosystem Management Project ROD - Clearwater NF - Appeal #03-01-00-0023 - Friends of the Clearwater, et al.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Gary Macfarlane on behalf of Friends of the Clearwater, Alliance for the Wild Rockies, The Ecology Center, The Lands Council, Palouse Group of the Sierra Club, and Idaho Sporting Congress protesting the Middle-Black Ecosystem Management Project Record of Decision (ROD) on the Clearwater National Forest.

The Forest Supervisor's decision adopts Alternative 4, which includes the following actions and management activities: Prescribed fire is planned in timbered stands within the roadless areas, recently acquired lands in the northeast corner of the analysis area, and portions of selected shrubfields; shrub cutting will be applied to a majority of the shrubfields (2,130 acres) having tree stocking of 100+ trees/acre; timber harvest will be used to convert about 640 acres of late and mid-successional stages to the early successional stage; control of noxious weeds, using an integrated pest management approach, will be implemented on approximately 2,300 acres along area roads, trails, administrative sites, and within disturbed areas; and watershed restoration in the areas of Cold Springs, Coyote Creek, Deception Gulch, Game Creek, Rock Creek, and Spring Hill consists of 71 miles of roads planned for decommissioning either through obliteration or abandonment. In addition to the road decommissioning activities, new culverts able to handle a 100-year storm event will replace existing culverts at 14 stream crossings.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the National Forest Management Act (NFMA), and the Clearwater Forest Plan. The appellants request the ROD be rescinded. An informal meeting was held but no resolution of the issues was reached.

### ISSUE REVIEW

**Issue 1. The Clearwater National Forest violated the National Environmental Policy Act (NEPA) by using non-NEPA, non-Decision documents to make programmatic decisions, similar to a Forest Plan.**

**Response:** The BHROWS is not a decision document; it was developed to identify project



opportunities. Any projects selected for implementation from the BHROWS Assessment would be analyzed through the NEPA process, with full public participation, as this project has done. The use of non-NEPA documents in Environmental Assessments and Environmental Impact Statements is an acceptable practice (40 CFR 1502.21). The use of this document to assist in determining the purpose and need for this project is in compliance with NEPA.

**Issue 2. The FEIS and ROD violate NEPA. The purpose and need is so narrow it precludes the opportunity to objectively evaluate alternative courses of action before decisions are made and before actions are taken. The Clearwater National Forest erroneously dismissed our alternative without having analyzed it.**

**Response:** The Agency's Deciding Official has the discretion to determine the purpose and need for a project proposal. The NEPA implementing regulations state the NEPA document shall "briefly specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). The Forest has provided information on the project to support the stated purpose and need. In addition, the purpose and need relates to the Forest-wide Management Direction. Establishing the purpose and need of a project, and how narrow or all encompassing it is, is up to the discretion of the Responsible Official. I find the purpose and need identified to be within the discretion of the Responsible Official and adequately linked to broader scale analyses.

The alternative submitted by the Friends of the Clearwater and the reasons for not considering it in detail are discussed in the FEIS (pp. 33-34).

**Issue 3. The Forest Service violates NEPA, the National Historic Preservation Act, and other laws pertaining to heritage resources by not completing the required surveys prior to issuing the FEIS and ROD.**

**Response:** The issue of heritage resources is discussed in the FEIS (pp. 25-26, 133-139 and 239-245). Although the Forest has not completed all surveys prior to issuing the FEIS and ROD, the Forest is clearly using the "phased identification and evaluation" process allowed for at 36 CFR 800.4(b)(2) and 36 CFR 800.5(a)(3) (ROD, p. 34). The Forest has entered into a Memorandum of Agreement with the Idaho State Historic Preservation Office (SHPO) (Doc. 7021). The Forest Service and SHPO have agreed to the phased identification and evaluation of heritage resources with stipulations of the MOA included as mitigation measures for the project.

**Issue 4. The Clearwater National Forest violated NEPA and the National Forest Management Act by relying on a forest plan that is outdated.**

**Response:** On February 14, 2003, Congress passed House Joint Resolution 2, also known as the Consolidated Appropriations Resolution, 2003. Sec. 320 of the resolution states, "Prior to October 1, 2003, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C.1600, et seq.) or any other law: Provided, that if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of

proper jurisdiction may order completion of the plan on an accelerated basis.” The Forest is in compliance with NEPA and NFMA.

**Issue 5. The Clearwater National Forest violated NEPA by failing to adequately analyze the effects of project activities on soil resources, including landslide risk, soil productivity, meeting soil quality standards and cumulative detrimental soil conditions. The Forest Service failed to undertake actual on-the-ground soil surveys in activity areas. The FEIS ignores the impacts of ORVs and snowmobiles on vegetation and soil productivity.**

**Response:** Effects of project activities on soils resources, including landslide risk, soil productivity, and meeting soil quality standards are discussed in detail in the ROD (pp. 13-16 and 19) and FEIS (pp. 21-22, 46-49, 53, 58-64, 78-79, 143-157, 178-180, and 182; Response to Comments, pp. 273 and 279-283; and App. I). The FEIS (p. 62, Table 3.2) indicates that landslides from timber harvest and fire represent a very small part of the picture (only 6 percent), while landslides from roads is 48 percent and natural causes are 45 percent. In the analysis, the soil quality standards are discussed and those units that presently exceed the 15 percent limit will not further exceed the limit at the conclusion of the project. Although the Regional soils guidelines are specific to activity areas, and are not designed to consider cumulative effects over the entire project area, the watershed discussion (FEIS, pp. 143 to 157) discusses the impacts to soils on the watershed scale, including discussion of soil productivity, erosion, and stability concerns. Maps (Figures 8a to 8d) are included to display treatment areas and their relationship to landslide locations, high mass wasting and debris avalanche potential areas. Supporting documentation is in the project file (Vol. 22, Docs. 22001, 22005, 22007, 22021, 22028, 22080, 22083, and 22085-86; Vol. 25, Doc. 25042; Vol. 32, Docs. 32006, 32010, 32018, 32019, 32015, and 32020; Vol. 33, Doc. 33023), including field notes taken by the soil scientist.

The issue of snowmobile use in the area was not brought up during public comment. However, the project area experiences little to no use by snowmobiles. Most off-road vehicle use occurs on the road system (FEIS, p. 125; Response to Comments, p. 302, #207 and 208; Vol. 1, Doc. 1006, pp. 54-55; Vol. 21, Doc. 21020, p. 8).

The establishment of Regional or Forest-wide soil quality guidelines is outside the scope of this project. The soil analysis is in compliance with NFMA, the Forest Plan, and the Regional Soil Guidelines.

**Issue 6. The Clearwater National Forest violated NFMA by not being consistent with the Forest Plan standard for maintaining old growth habitat.**

**Response:** The FEIS concludes that all action alternatives would have no effects on old growth, as logging and burning would not occur in old growth (ROD, pp. 20 and 31-32). The FEIS identifies old growth habitat as an issue dismissed as non-relevant because all treatment areas were purposely delineated outside of any old growth (FEIS, pp. 26 and 196-198).

An extensive review of stands proposed for treatment was compared against existing old growth data. The first step involved a review of all stands in each Old Growth Analysis Unit (OGAU) within the project area. This included a review of all past designations of old growth. The old growth attribute descriptions found in the publication, *Old Growth Forest Types of the Northern Region (USDA, 1992)*, was used for each major habitat type group. Verification was made based on photo interpretation (PI), PI strata, stand exam inventory data (44 percent stands with recent

data), and field knowledge. Stands passing this review and considered to be old growth or potential old growth were dropped from consideration for management. In OGAUs found to have less than the minimum 5 percent old growth, recruitment stands were identified to allow the stands to become old growth in the future (FEIS, p. 289). Adjustments were then made to any affected treatment areas to exclude any old growth (existing or recruitment) from proposed treatment. This issue is also addressed in Response to Comments (FEIS, pp. 289-294, #148-154, 157, 158, 168 and 1690). Supporting documentation is in the project record (Vol. 10, Docs. 10001-10003, 10007-10008, 10011 and 10013-23).

Since Alternative 4 would not remove any old growth forest or identified replacement old growth stands, the project is in compliance with the Forest Plan old growth standards (Forest Plan, p. II-23) and the guidelines (Forest Plan, App. H).

**Issue 7. The FEIS and ROD fail to demonstrate consistency with Forest Plan standards and guidance regarding long-term retention of sufficient habitat to assure viability of species that need standing and down dead trees.**

**Response:** Snag habitat was identified and addressed as a non-relevant issue in the FEIS (p. 27). The proposed activities would meet the intent of the Forest Plan. The retention of standing trees in proposed treatment areas and riparian buffers address the need for standing and down wood to meet desired conditions for each LTA. Approximately 50 percent of the existing stand structure would be retained after harvest, and prescribed burning after harvest would create more snags among the leave trees. Generally, all large trees over 20 inches DBH would be retained and some would end up as snag habitat after treatment. All snags would be left in areas treated by prescribed fire (FEIS, p. 2-28). With the included mitigation measures, Forest Plan standards and guidelines for snag habitat would be met.

**Issue 8. It is not clear from the NEPA documentation for this project whether goshawk viability is in fact being maintained or how goshawk viability is expected to be maintained into the future if this and other cumulative actions proceed.**

**Response:** NFMA requires that fish and wildlife habitat be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. Habitat for northern goshawk would be maintained or improved within the project area. INFISH riparian buffers and standards would be implemented along with no treatments in old growth habitat, which should protect habitat for the northern goshawk (FEIS, p. 198). The planned actions, when compared to existing patch size and historic timber harvest practices, would enhance the development of larger patches of older trees by: 1) retaining patches (which include primarily mid-seral and late mature) and 2) promoting increased tree growth in younger patches of dense forest (BE, App. M, p. 102). In addition to the existing and replacement old growth, there is a substantial amount of late seral stands remaining that would provide supplemental habitat for these species, even under the most aggressive action alternative.

As stated in the ROD (p. 19) and FEIS (pp. 53 and 194), management prescriptions for all action alternatives have been developed to have either a “no effect” or a “beneficial effect” to wildlife species. Given the nature of this project there are no anticipated adverse or negative direct, indirect, or cumulative impacts that would affect the viability of any wildlife species or its habitat.

**Issue 9. The FEIS and ROD violate the “consistency” requirement of NFMA, through several violations of Clearwater Forest Plan requirements for wildlife population trend monitoring.**

**Response:** The Clearwater National Forest is monitoring wildlife population trends of old growth management indicator species pileated woodpecker, goshawk and pine marten. The monitoring is reported in the annual Forest Plan Monitoring and Evaluation Reports. The 2001 report (p. 125) states, a “normal population of pileated woodpecker and goshawks were commonly observed across the Forest and coincide with maintenance of old-growth habitat... Pine martens are very common in higher elevations and continued to be trapped with no limits or harvest restrictions being considered.”

The Forest Plan does not require the Clearwater National Forest to monitor population trends of sensitive species. The Forest analyzed the habitat conditions and environmental effects the project would have on sensitive species as required by the Region. The Forest is in compliance with NFMA, the Forest Plan, and the Forest Service Manual.

**Issue 10. The FEIS inadequately analyzed the impacts to roadless areas from proposed activities. The effects of agency-ignited fire and hardwood brush cutting on roadless areas are not adequately analyzed. The Clearwater National Forest Plan requires an area analysis, prior to roadless area entry, and suggests that same kind of analysis in roaded landscapes depending on the complexity of the proposed project. The cumulative effects analysis in the FEIS consists of charts and no real analysis. The FEIS failed to analyze what effect prescribed fire and slashing would have on recommendations of these areas for wilderness and/or continued roadless management in the revised forest plan. The slashing that is proposed for the B2 or B2 settlement areas, could affect wilderness characteristics, according to attachment 4, and can’t be allowed.**

**Response:** The ROD identifies acres of ignited prescribed fire within roadless areas (4,380 acres) and release/slash/prescribed fire/plant within shrub fields (2,560 acres) (p. 19). The ROD also discusses the President’s Roadless Initiative and states, “this project will follow the direction of Interim Directive 1920-2001-1, which prohibits road construction and reconstruction activities (including temporary road construction) and timber harvest except for stewardship purposes on inventories roadless areas.” The Regional Forester found the Middle-Black project to be consistent with Interim Directive 1920-2001-1, and that the project needs not to be forwarded to the Chief’s Office for approval.

The FEIS identifies roadless areas as an issue and carries it through the analysis (pp. 21 and 28-29. Existing condition is identified (pp. 116-123), and effects are identified for different activity types for each roadless area (pp. 219-226). Effects of fire and slashing are addressed as related to the wilderness features/roadless characteristics in Tables 4.15 to 4.20.

The Clearwater Forest Plan requires an area analysis prior to the first entry in all inventoried roadless areas designated for development. This project is not an entry for development, so the detailed analysis identified in the Forest Plan is not required.

Reasonably foreseeable future actions within roadless are identified as three timber sales and two prescribed fire projects. Acres of activities are provided by roadless areas, and the effects are identified as similar to those described for direct and indirect effects (FEIS, pp.

219-226).

The ROD addresses effects on recommendations of the roadless areas for wilderness and/or continued roadless management in the revised Forest planning process by stating that Alternative 4 will use prescribed fire in roadless areas, resulting in fire patterns similar to natural fires. Since the effects of cutting shrubs in roadless areas would consist of treating small diameter material, followed by rapid regrowth, there would be no effect on the wilderness character of these areas. This would not diminish the values important to any future wilderness designation. Also, the cutting of shrubs would not reduce the rating of treated areas considered for “recommended wilderness” in the upcoming Forest Plan revision (ROD p. 21).

The settlement agreement states, “The Forest Service agrees, effective immediately, not to approve any timber sale or road construction project decisions within the area covered by the proposed “Idaho Wilderness, Sustainable Forest and Communities Act of 1993,” H.R. 1570 and that such lands will be managed according to Forest Plan standards and guidelines for recommended wilderness (Management Area B2).” The Forest plan says to manage all uses to maintain wilderness qualities and retain semi primitive settings. All activities within settlement areas will allow lands to continue to be managed according to MA B2.

**Issue 11. The FEIS failed to consider the competition to conifers from vigorous brush resprouting following slashing.**

**Response:** Most of the existing shrubfields resulted after high intensity wildland fires burned through forests early in the last century. Fires greatly reduced site productivity by eroding the ash cap and soil and damaging other important soil properties. Shrubs, which are less demanding of moisture and nutrients than trees, took over the damaged areas. Burning could harm areas by eliminating leaf litter and organic material and set back recovery even more. Repetitive burning was tried in the 1970’s, and these shrub fields were noticeably less productive after the repetitive treatments. Shrubfields that have some conifer component are proposed for mechanical treatment. Shrubs will be cut in the area around the conifers to give the trees additional light and a “jumpstart” toward dominating the site. In the short term, cutting of old woody shrubs will stimulate some new sprouts that will provide forage for wildlife. In a few shrubfields, where good soils remain, it may have been a shortage of conifer seed that led to the shrub domination. These few shrubfields would be cut, burned and replanted to conifers (Vol. 1, Doc. 1008, p. 25).

Prescribed fire on thick-soiled shrubfields would vary depending on actual site conditions. A majority of these areas have an estimated 100+ trees/acre within the shrubs. Since it is desired to have these areas proceed through succession, steps other than fire would be taken to reduce shrub competition around the emerging young stands of trees. Trees overtopped by shrubs would have the competing shrubs slashed within a tree radius of each tree (FEIS, p. 29).

**Issue 11. The historic range of variability in regards to fire regimes may not be valid.**

**Response:** The historic range of variability and its validity is adequately discussed in many places throughout the FEIS (pp. 5-8, 61, 34-6, 157-158 and 262-272) and project file (Vols. 4, 6, 22, and 33; Docs. 4003, 4005, 4014, 6006, 6017, 6038, 22003, 22004, 22076, 33002 and 33003).

**Issue 12. The economic information in the FEIS is incomplete and fails to display the whole economic picture as to how the Middle-Black proposal will impact community economics. The FEIS fails to analyze the effects this sale will have on communities and individuals that live away from the site. The FEIS does not explain how Middle-Black as a “stewardship project” is more effective or what the economic value is of ecosystem restoration or why it is needed.**

**Response:** The FEIS adequately analyses the impact the project would have on local communities (pp. 52-53, 139-141, and 245-252). The cumulative effects analysis area for economics covers Shoshone, Clearwater, Nez Perce, Lewis, and Idaho Counties in Idaho, and part of Mineral County in Montana. This included the town of Avery in the north, Superior in the northeast, Lewiston in the west, and Grangeville to the south (PF, Docs. 3058 and 3069, p. 10; EIS, p. 247). The FEIS found little to no cumulative effect at this distance (EIS, pp. 252 to 253), and enlarging the cumulative effects analysis area would not enhance the analysis.

Project-level economic analysis does not require that non-commodity economic values be addressed. “Weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations” (40 CFR 1502.23). The NEPA process shall be used “...to emphasize real environmental issues and alternatives” [40 CFR 1500.2(b)]. The primary focus at the project level is to identify economic implications that are unique to the decisions made at this management level, as was done in the FEIS (pp. III-83 to 93). The economic analysis complies with all laws and the Forest Service Manual and Handbook.

NEPA does not require analysis on the type of contract used for implementation of a project. A “stewardship” contract has no bearing on project proposal or analysis of effects to the environment. It focuses on how the proposal will be financially accomplished. A contract is used to implement a proposal so that activities occur as designed to insure effects are within the scope of those predicted in the analysis.

**Issue 13. The FEIS and ROD do not adequately address noxious weeds and herbicides. The impacts of herbicide use are not adequately addressed. The FEIS still contains herbicide application rates that exceed labeling requirements even though the FEIS claims labels will be followed. Mitigation measures addressing spread of noxious weeds are suggestions.**

**Response:** Noxious weed management is a key component of the purpose and need for the project and is discussed in detail in the ROD (pp. 5, 9-10, 12, 15, 18, 19 and 23) and FEIS (pp. 20, 22, 30, 34, 52, 113-115, 207-219 and 295). The herbicide application rates and label requirements for Clopyralid were clarified in Response to Comments (FEIS, p. 297). The mitigation measures related to noxious weeds management and herbicide applications are mandatory requirements, not suggestions.

### RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the Forest Supervisor’s decision be affirmed and the appellants’ requested relief be denied.

/s/ Thomas Pettigrew, Jr.  
THOMAS PETTIGREW, JR.  
Appeal Reviewing Officer  
Director of Engineering